

Charges for voice mail services are not subject to Telecommunications Excise Tax if they are disaggregated from transmission charges and separately identified in the books and records of the retailer. See 86 Ill. Adm. Code 495.100. (This is a GIL.)

February 28, 2006

Dear Xxxxx:

This letter is in response to your letter dated May 14, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

ABC is submitting the following General Information Letter ('GIL') request on behalf of an unnamed client; Company Y (hereinafter, 'Y' or the 'Company'). We had previously requested a GIL on behalf of Y in July 1997; the response, ST 97-0607-GIL, dated December 26, 1997 (copy enclosed) provided general information on the taxability of telecommunications.

Considering that Illinois tax laws related to telecommunications have changed in the years following that letter, Y is requesting that the Department of Revenue revisit this issue by responding with updated information regarding the following issues:

ISSUES

1. Are Y's services subject to the Illinois Telecommunications Excise Tax?
2. Are Y's services subject to the Illinois sales and use tax?
3. Would the services provided by Y be considered a 'prepaid telephone calling arrangement' subject to Illinois sales and use tax?

BACKGROUND

Y is a corporation that provides interpersonal companionship services to individual customers, nationwide. Some of its customers are located in the State of Illinois. Y provides its services through the use of an Interactive Voice Response (IVR) system that provides customers with telephone access to services at the option of the caller. The IVR system is comprised of computer hardware and software, which is physically located in Illinois.

Simply stated, Y is providing its customers with the opportunity to communicate with other like-minded individuals (via 'live chat' or recorded messages) through the telephone, and to review and compile information about these individuals, in order to make decisions about whether or not to physically interact with them in the future.

Y's service allows a customer to record and retrieve messages left in personal voice mailboxes (i.e., telephone personal ads). This service also offers the following advanced features or options:

- Friend Finder;
- Call Forwarding;
- Message Paging;
- Bookmarking, and
- Live Chat.

Y advertises for these services, along with a selection of top personal advertisements, in various newspapers or other media.

To use the services, customers purchase blocks of time from Y. The customer purchases the time through an advertised 900 number, a local number, or by mailing a money order to Y's offices located outside of Illinois. Purchases made through the 900 number are charged to the customer's telephone bill. Any pertinent sales tax due on purchases of prepaid services through the 900 number payment option would be assessed on the customer's telephone bill, and collected and remitted by the customer's local telephone service provider. For the other options, the customers can make payments by credit card, bank draft, or money order. The customer is then given a local telephone number to access the services.

In summary, based upon our discussions with Y personnel, and other information provided by the Company, it can be reasonably concluded that the following services are all integrated parts of the interpersonal companionship service provided by Y:

- 1-900 type services;
- Call forwarding, voicemail and messaging, answering services, and other interactive features;
- Information retrieval and storage, and
- Data processing.

Since the charges for the individual services (i.e., voicemail, information services, and/or computer services) provided are not separately stated, it is not possible to segregate nontaxable services from potentially taxable services.

GIL REQUEST

We request a GIL from the Illinois Department of Revenue providing information regarding the aforementioned issues related to the taxability of interpersonal companionship services provided by Company Y.

If you have any additional questions regarding this GIL request, please do not hesitate to contact me.

DEPARTMENT'S RESPONSE:

We are without sufficient information on the billing practices and arrangement to access the 900-code number service to issue specific guidance on your request. However, I hope the following general information will be helpful.

For prepaid calling arrangements, please note that beginning January 1, 2001, prepaid telephone calling arrangements are considered tangible personal property subject to Retailers' Occupation Tax liability and not the Telecommunications Excise Tax. "Prepaid telephone calling arrangements" means the right to exclusively purchase telephone or telecommunications services that must be paid for in advance and enable the origination of one or more intrastate, interstate, or international telephone calls or other telecommunication using an access number, and authorization code or both, whether manually or electronically dialed, for which payment to a retailer must be made in advance, provided that, unless recharged, no further service is provided once that prepaid amount of service has been consumed. See 86 Ill. Adm. Code 130.101.

If the services were billed in the same manner as traditional 900 numbers, through the telecommunications provider, then Telecommunications Excise Tax may apply. For general information regarding the Telecommunications Excise Tax please refer to 86 Ill. Adm. Code 495.100 et seq.

The Telecommunications Excise Tax is imposed upon the act or privilege of originating or receiving intrastate or interstate telecommunications in Illinois at the rate of 7% of the gross charges for such telecommunications purchased at retail from retailers. See 86 Ill. Adm. Code 495. Pursuant to Section 495.100(a), "gross charge" means the amount paid for the act or privilege of originating or receiving telecommunications in this State and for all services and equipment provided in connection therewith by a retailer, valued in money, whether paid in money or otherwise, including cash credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of material used, labor or service cost or any other expense whatsoever.

For general information regarding application of the Telecommunications Excise Tax, please refer to 86 Ill. Adm. Code 495.100, which sets forth examples within the meaning of "Gross Charges." For example, if a resident in Illinois initiates a call to a 900 number and receives a billing statement for that call at his or her service address, the call will be subject to the Telecommunications Excise Tax. The Telecommunications retailer is responsible for remitting the tax due on the line charge. See 86 Ill. Adm. Code 495.100(h).

A caller located in Illinois who calls a 900 number and receives a billing for that call at his or her service address, will have made a call subject to Telecommunications Excise Tax. The invoice to

the caller for a 900 number call does not need to separately state the line charge and tax thereon specifically. However, the telecommunications retailer is responsible for remitting the tax due on the line charge. For example, if a call to a 900-code number is made and the caller is billed \$1.00, and 80¢ is the transmission charge, then 80¢ is included in gross charges subject to Telecommunications Excise Tax.

Charges for billing and collection received by telecommunications retailers from persons selling services or products to the telecommunications retailer's customers, that are billed and collected by the telecommunications retailer, are not included in gross charges. For example, a call to a 900-code number to purchase a product that is billed by the telecommunications retailer as follows: \$25.00 service charge to the caller for the product or service, and a 30¢ call charge (15¢ call, 15¢ billing and collection). The 15¢ billing and collection charge and the \$25.00 service charge are not included in gross charges, only 15¢ is included in gross charge

Billing and collections charges paid by persons selling services or products to telecommunications retailer's customers or billing and collections charges paid by telecommunications retailers to credit card companies whose holders have charged calls are not includable in gross charges. This would be the case if the prepaid 900-code numbers you reference in your letter were billed to either a credit card, paid by check or money order, rather than the traditional method of being billed through the telephone provider.

Charges for voice mail services are not be subject to Telecommunications Excise Tax if they are disaggregated from transmission charges and separately identified in the books and records of the retailer. Regulation 86 Ill. Adm. Code 495.100(c) states in part that: "Charges for answering services, for example, whether provided electronically or by live operators, represent charges for the storage of information or data for subsequent retrieval, and are not subject to tax, provided that these charges, if provided in connection with taxable telecommunications, are disaggregated and separately identified in the books and records of the retailer."

If a retailer provides both the voice mail and transmission services, the voice mail charges are subject to tax unless they are disaggregated and separately identified from the transmission charges in the books and records of the retailer. If the voice mail and transmission services are provided by separate providers, and billed by separate providers, the voice mail charges would meet the disaggregation requirement and would not be included in gross charges subject to tax. If the voice mail and transmission services are provided by separate providers but charges for both are billed by one of the providers, the voice mail charges would meet the disaggregation requirement and would not be included in gross charges subject to tax as long as they can be separately identified from the transmission charges in the books and records of the providers.

As noted in Section 495.100(c), charges for automated information retrieval or data processing are not taxable. The regulation contemplates that charges for access to an on-line computer database fall within this category. Charges for the inquiry or access are generally not taxable, but charges, if any, for transmission of the data are generally subject to the Telecommunications Excise Tax. If telecommunications retailers provide both transmission and data processing services, the charges are subject to tax unless the charges for each are disaggregated and separately identified in the books and records of the retailers.

Generally, charges for chat line services, other than the charges for transmission, are not subject to Telecommunications Excise Tax. Section 495.100(i) states that "[g]ross charges shall include the transmission charges for premium services. Time/weather, gab line/party line and other public announcement services of information and entertainment, and charges for the message

content or information of such services, are not included in gross charges.” If the sales of chat line services are not disaggregated from transmission charges, they are subject to tax.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department’s Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

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